JUN 22 1974

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-6935

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

Plaintiffs-Appellants

- vs -

JEROME MILLER individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

Defendants-Appellees

JURISDICTIONAL STATEMENT

BEST COPY AVAILABLE

PATRICK A. KEENAN
DePaul Law Clinic
DePaul University College of Law
25 East Jackson Boulevard
Chicago, Illinois 60604
(312) 939-5370

Attorney for Plaintiffs-Appellants

Of Counsel:
[illegible]

I N D E X

	Page
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	2
JURISDICTIONS OF THIS COURT	2
QUESTIONS PRESENTED	3
STATUTES INVOLVED	4
STATEMENT OF THE CASE	6
ARGUMENT	
THE QUESTIONS PRESENTED ARE SUBSTANTIAL	8
INTRODUCTION	8
1. Discrimination Against Children	8
2. Subsequent Supreme Court Decision	8
3. Conflicting Federal Court Decision	9
4. Construction of a Federal Law	9
I. THE ILLINOIS FOSTER PAYMENT SCHEME CREATES TWO CLASSES OF PERSONS FOR FOSTER CARE BENEFITS: FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE STRANGERS AND FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE RELATED TO THEM. FULL FOSTER CARE PAYMENTS ARE MADE TO THE FORMER CLASS AND NONE ARE MADE TO THE LATTER. DOES THIS CLASSIFICATION VIOLATE THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, AND SPECIFICALLY THE EQUAL PROTECTION CLAUSE?	10
II. THE ILLINOIS FOSTER PAYMENT SCHEME CREATES TWO CLASSES OF PERSONS FOR FOSTER CARE BENEFITS: FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE STRANGERS AND FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE RELATED TO THEM. FULL FEDERALLY SUBSIDIZED FOSTER CARE PAYMENTS ARE MADE TO THE FORMER CLASS AND NONE ARE MADE TO THE LATTER. DOES THIS CLASSIFICATION VIOLATE THE SOCIAL SECURITY ACT, 42 U.S.C. §§601, 608 AND THE SUPREMACY CLAUSE, U.S. CONST. ART. VI §2?	12
APPENDICES	

TABLE OF AUTHORITIES

	Page Cited
King v. Smith, 392 US 309 (1968), 88 S.Ct. 2128	3,11
Lewis v. Martin, 397 US 552 (1970), 90 S.Ct. 1282	3,11
Townsend v. Swank, 404 US 282 (1971), 92 S.Ct. 502	3,13
Stanely v. Illinois, 405 US 645, 92 S.Ct. 1208 (1972)	10
Weber v. Aetna Life and Casualty Ins. Co., 406 US 164 92 S. Ct. 1400 (1972)	10
Gomez v. Perez, 409 US 535, 93 S. Ct. 872 (1973)	10
New Jersey Welfare Rights Org. v. Cahill, 411 US 619, 93 S. Ct. 1700 (1973)	10
U.S. Dept. of Agriculture v. Moreno, 413 US 528, 93 S. Ct. 2821 (1973)	10
Williams v. Wohlgemuth, 366 F Supp 541 (W.D. Pa. Dec. 11, 1973) affd. No. 73-1188, 42 USLW 3551 April 2, 1974	8,10,11
Jenkins v. Georges, 312 F Supp 289 (W.D. Pa. 1969)	11
Marotti v. White, 342 F Supp 823 (D. Conn. 1972)	11,13
Clampett v. Madigan, (CIV 73-4018 D. S. Dak. So. Div. Dec. 6, 1974)	9
Senate Report No. 628 74th Cong. (1935)	12

IN THE

SUPRENE COURT OF THE UNITED STATES

October Term, 1973

No. _____

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

Plaintiffs-Appellants

- vs -

JEROME MILLER individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JURISDICTIONAL STATEMENT

Appellants, representatives of a class, by their attorney PATRICK A. KEENAN, DePaul Law Clinic, respectfully appeal the parts of decision and judgment of the United States District Court for the Northern District of Illinois, which granted summary judgment for the Appellee state officials, denied an injunction against the operation of the statute, and dismissed the Complaint. This Statement is filed to show that the Supreme Court has jurisdiction of the appeal and that the questions presented are substantial.

OPINION BELOW

The February 28, 1974 Memorandum of Decision of the three-judge District Court for the Northern District of Illinois, Eastern Division granting summary judgment in favor of Defendants-Appellees and dismissing the complaint to enjoin the execution of a state statute is not yet reported. Said decision declared that this cause is a class action. A copy of the Memorandum of Decision is attached as Appendix A (14 pages).

JURISDICTION OF THIS COURT

This was a civil rights class action in which appellants, foster parents and minor wards of the state--foster children--related to one another sought an injunction against the operation of that part of the Illinois statutory foster care scheme which denies full foster care payments to Appellants for the sole reason that they are related. Appellants contend that they are discriminated against because of their related status, and that such discrimination violates the Social Security Act and the Equal Protection Clause of the United States Constitution.

The action was filed on March 13, 1973. Jurisdiction of the District Court was based on 28 U.S.C. 1343(3)(4) and 42 U.S.C. 1983. A three-judge court was convened. 28 U.S.C. 2281, 2884. On cross motions for summary judgment the District Court decided on February 28, 1974 that: First, the action could be maintained as a class. Second, the Eleventh Amendment did not bar the suit. Third, the Illinois foster care scheme, though concededly discriminatory, did not violate the Equal Protection Clause or the Social Security Act, and accordingly the suit to enjoin the operation of the

statute was dismissed without trial. The Plaintiffs appeal only the third part of the February 28, 1974 decision.

The Notice of Appeal was filed in the United States District Court (N.D. Ill. E.D.) on April 23, 1974.

The Supreme Court is authorized to decide a direct appeal from a three-judge district court decision dismissing a suit to enjoin the operation of a state statute. 28 U.S.C. 1253. King v. Smith, 392 US 309 (1968); Lewis v. Martin, 397 US 552 (1970); Townsend v. Swank, 404 US 282 (1971).

QUESTIONS PRESENTED

1. The Illinois foster payment scheme creates two classes of persons for foster care benefits: foster children living with foster parents who are strangers and foster children living with foster parents who are related to them. Full foster care payments are made to the former class and none are made to the latter. Does this classification violate the Fourteenth Amendment to the U.S. Constitution, and specifically the Equal Protection Clause?

2. The Illinois foster payment scheme creates two classes of persons for foster care benefits: foster children living with foster parents who are strangers and foster children living with foster parents who are related to them. Full federally subsidized foster care payments are made to the former class and none are made to the latter. Does this classification violate the Social Security Act, 42 U.S.C. §§601, 608 and the Supremacy Clause, U.S. Const. Art. VI §2?

STATUTES INVOLVED

1. The State statutes challenged provide for payment to foster parents who care for children who are wards of the State--foster children, unrelated to them. But the statutes deny these payments to foster parents who care for wards of the State--foster children who happen to be related to their foster parents. Ill. Rev. Stat., Ch. 23 §2212.05 and §2212.17 (1971) provide in relevant part:

> "Facility for child care" or "child care facility" means any person, . . . who or which receives or arranges for care of placement of one or more children, unrelated to the operator of the facility. Dept. of Children and Family Services. Ill. Rev. Stat. Ch. 23, §2212.05 (1971)
>
> and
>
> "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, . . .
> Ch. 23, §2212.17 (emphasis added)
> (Entire text set out in Appendix B.)

2. The general powers and duties of the Illinois Department of Children and Family Services (hereafter DCFS) and its Director, Defendant-Appellee Jerome G. Miller are set out in Ill. Rev. Stat., Ch. 23, §5001 and 5005 (1971). The Department was created to provide social services to children and their families (§5001).

> The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services. (§5005, ¶5) (Entire texts set out in Appendix C.)

3. Under Illinois law the only persons who have a legal duty to support their relatives are natural and adoptive parents. Ill. Rev. Stat., Ch. 23 §2-11 (1971).

(Entire text set out in Appendix D.)

4. Certain regulations of the Illinois DCFS are concerned with licensing of and payment to foster homes. See Ill. DCFS Placement Manual Ch. 3, §5 at p.97. (Entire text set out in Appendix E.) In its Memorandum of Decision, the District Court correctly observed that these regulations did no more than summarize what is apparent on the face of the statutes. The Court accordingly addressed itself only to the challenged statutes.

5. Not challenged, but involved in this case are certain sections of the Social Security Act (Ch. 42 U.S.C. §§601, 608) (Entire texts set out in Appendix F and G, respectively.)

Section 601 mandates a clear national policy of encouraging the care of dependent children in their own homes or in the homes of relatives whenever possible. State appropriated child welfare plans must be designed to help maintain and strengthen family life, and to help such parents or relatives.

Section 608 provides for federal funds to be paid to children care for "in the foster family home of any individual." Ch. 42 U.S.C. §608(b)(1). There are no exclusions.

-5-

Illinois generally subsidizes its wards placed in foster homes at the rate of $105.00 per month paid from HEW funds earmarked for dependent children in foster care. Eligibility for state wards is automatic. But one relatively small group of about 1,500 of the state's twenty thousand wards are barred from receiving this subsidy. These are the children who are placed in homes of their relatives. The excluded children are otherwise in the identical situation as all other state wards who are placed in homes of strangers.

The relatives' homes in which the Appellant children are placed must and do conform to all the standards generally applicable to all foster homes. The Appellees have the identical duty to provide care, service, and subsidy to all state wards including the Appellant related foster children. The duty includes finding the best possible placement for each child. Perhaps most important, by federal and state mandate, whenever possible the child must be placed in the home of a relative.[1]

Yet despite the clear mandate of the statutes, it is the group of children who are placed with relatives who are denied the subsidy.[2]

The facts of this case are extremely simple. The Illinois foster care system denies full subsidy to children admittedly in the optimum placement and grants full subsidy to all others. It is inherently discriminatory. It results in undue hardship. It violates the rights of children to equal protection of law.

1] The relatives with whom the children are placed have no legal duty to contribute to the support of the foster children, and the state cannot expect contribution. Only natural and adoptive parents are liable for the support of their children.

2] Some of these 1,500 children have learned that a small AFDC subsidy of about $60 per month (from sources other than foster care funds), may be available upon satisfaction of criteria in addition to state wardship. Many members of the Appellants' class are not even aware the AFDC subsidy may be available.

The scheme frustrates, and is directly opposed to the sections of the Social Security Act and of the parallel state laws that require family ties to be encouraged and strengthened and children to be placed with relatives whenever possible.

In the District Court Appellants sought to enjoin execution of the statutes which establish this system. (Ill. Rev. Stat., Ch. 23 §§2212.05, 2212.17, 1971).

Appellants alleged by affidavits, and offered to prove at trial, that there is a shortage of qualified foster homes in Illinois; that the present system prevents the placement of some wards with relatives willing to take them; and creates severe hardship for some foster parents now caring for state wards related to them. They are prepared to prove that some children could be removed from expensive institutional placement and into related foster homes if the full subsidy were readily available.

Appellees herein admitted the scheme is obviously discriminatory. The District Court specifically found that this discrimination causes some children to be separated from their relatives for mere financial reasons. (Appendix A, Mem. of Dec. p.11)

The District Court nonetheless decided that the challenged scheme did not violate equal protection of the laws, and was not inconsistent with the Social Security Act. Summary judgment was entered for the Defendants-Appellees.

THE QUESTIONS ARE SUBSTANTIAL

INTRODUCTION

For four reasons the questions presented on this appeal are substantial and have great public importance which warrant consideration with full briefs and arguments.

1. Discrimination Against Children

The Court has given very thorough scrutiny to cases which allege discrimination against a group of children. Their rights to equal protection are jealously guarded because the discrimination they suffer is based on mere status for which the children are in no way responsible.

The case on appeal charges discrimination against a group of children who were placed in a particular category by the state and then denied federally subsidized benefits because of the classification.

2. Subsequent Supreme Court Decision

On April 2, 1974 this Court summarily affirmed Williams v. Wohlgemuth, 366 F Supp 541 (W.D. Pa. Dec. 11, 1973) affd. No. 73-1188, 42 USLW 3551, a three-judge court opinion which enjoined the execution of part of the Pennsylvania welfare code. The section granted federally funded payments to certain children living with relatives but denied payment to identically situated children living with non-relatives.

Williams is another case where the federal court enjoined a state's attempt arbitrarily to deny benefits to children solely on the basis of their status--in this case because they resided with a nonrelative. The court recognized their financial need, and the state's duty to meet their need was identical, not related to where or with whom they lived.

It is the mirror image of the case on appeal.

3. Conflicting Federal Court Decision

A federal court in South Dakota recently decided the identical question presented by Appellants. In Clampett v. Madigan (CIV 73-4018 D.S. Dak. So.Div. Dec. 6, 1974) Chief Judge Fred J. Nichol enjoined the operation of part of the South Dakota foster care scheme. The scheme provided that foster children who lived with strangers automatically received full subsidy and foster children placed with relatives could, upon establishment of eligibilty get a small AFDC subsidy.

The South Dakota court decided the scheme was inconsistent with parts of the Social Security Act which mandate placement with relatives wherever possible and encourage the development of family ties. The South Dakota scheme--and the Illinois scheme--set up an economic disincentive and have the direct opposite effect. They pull families apart.

4. Construction of a Federal Law

The Court is presented with conflicting decisions about the rights of children with the same needs to the same support payments funded by the major federal revenue sharing law: the Social Security Act, 42 U.S.C. §601, 608. A question of federal supremacy is involved. U.S. Const. Art. VI §2.

The case on appeal is one of great significance to state legislators, to HEW administrators, to state foster care program and welfare administrators, and to the lower courts. Most importantly the case has critical significance to all of the unfortunate children who cannot live with their parents, who wish to live with their relatives, and who must look to the state as the sole source of care, guidance and support.

The questions presented are substantial.

I. THE ILLINOIS FOSTER PAYMENT SCHEME CREATES TWO CLASSES OF PERSONS FOR FOSTER CARE BENEFITS: FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE STRANGERS AND FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE RELATED TO THEM. FULL FOSTER CARE PAYMENTS ARE MADE TO THE FORMER CLASS AND NONE ARE MADE TO THE LATTER. THIS CLASSIFICATION VIOLATES THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, AND SPECIFICALLY THE EQUAL PROTECTION CLAUSE.

Illinois law confers a right of support from the state to all children who become foster children--wards of the state. Once a state posits a judicially enforceable right on behalf of all children to needed support, there is no constitutionally sufficient justification for denying some children an essential right. Gomez v. Perez, 409 US 535, 93 S. Ct. 872 (1973); New Jersey Welfare Rights Organization v. Cahill, 411 US 619, 93 S. Ct. 1700 (1973); Williams v. Wohlgemuth, 366 F Supp 541 (W.D. Pa. Dec. 11, 1973 p.8 supra). Williams was summarily affirmed by this Court on April 2, 1974, 42 USLW 3551, after Appellants' case was dismissed.

Appellants have absolutely no control over actions of the State of Illinois regarding adjudications of wardship or placement. Their burden has absolutely no relationship to individual responsibility. Weber v. Aetna Life and Casualty Ins. Co., 406 US 164, 92 S. Ct. 1400, 31 L.Ed2d 768 (1972). Compare Stanley v. Illinois, 405 US 645, 92 S. Ct. 1208 (1972). And the legislative classification of the Illinois scheme may also be in violation of the Due Process Clause of the Fourteenth Amendment, according to the reasoning in U.S. Dept. of Agriculture v. Moreno, 413 US 528, 93 S. Ct. 2821 (1973).

In upholding the discriminatory Illinois system the District Court said that:

BEST COPY AVAILABLE

> This classification, the wisdom of which is not for us to determine, bears a rational relationship to the legitimate purpose of attempting to assure that foster homes are made available. Some related foster parents may not be able to afford the responsibility of caring for additional children, but the state argues that the scheme was not enacted to alleviate this problem. . .
> (App. A, p.8)

The District Court decided that the classification was necessary to insure that the limited funds available for foster care were put to the best use and that the challenged scheme was designed to provide for allocation of funds to secure the maximum number of foster parents. The District Court surmised that the state was attempting to accomplish this by distributing the funds only to persons who would otherwise have no particular reason or incentive for becoming foster parents (App. A, p.8).

The District Court here accepted the reasoning of the Ramos decision and applied it to Appellants' case. It improperly placed relatives into the classification of natural parents, equating what the Court perceived to be a moral duty with the legal duty of support. The District Court erred. See Williams v. Wolgemuth, 366 F Supp 541 (1973) affd. 42 LW 3551 (1974); Lewis v. Martin, 397 US 552, 90 S. Ct. 1282 (1970); King v. Smith 392 US 309, 88 S. Ct. 2128 (1968); Marotti v. White, 342 F Supp 823 (D. Conn. 1972); Jenkins v. Georges, 312 F Supp 289 (W.D. Pa. 1969).

Appellants alleged and are prepared to prove at trial that if the full foster case subsidy were provided, recruitment of relatives would be much more efficient and less expensive than development of new facilities in the homes of strangers; that more children could be placed in foster care with their relatives; that fewer children would be kept in institutions. Thus the overall cost of child care would be reduced.

II. THE ILLINOIS FOSTER PAYMENT SCHEME CREATES TWO CLASSES OF PERSONS FOR FOSTER CARE BENEFITS: FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE STRANGERS AND FOSTER CHILDREN LIVING WITH FOSTER PARENTS WHO ARE RELATED TO THEM. FULL FEDERALLY SUBSIDIZED FOSTER CARE PAYMENTS ARE MADE TO THE FORMER CLASS AND NONE ARE MADE TO THE LATTER. THIS CLASSIFICATION VIOLATES THE SOCIAL SECURITY ACT, 42 U.S.C. §§601, 608 AND THE SUPREMACY CLAUSE, U.S. CONST. ART. VI §2.

In enacting the Social Security Act of 1935, and more specifically the program entitled Aid to Families with Dependent Children (AFDC), 42 U.S.C. §§601 et. seq., Congress tried to insure that children will remain with their natural parents or, if this were not possible, then with relatives. S.Rep. No. 628, 75th Cong. 1935. The purpose of the Act is clearly declared:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance . . . to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life. . . there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.
> 42 U.S.C. §601 (Appendix F) (emphasis added.)

BEST COPY AVAILABLE

It is axiomatic that a State system which does not encourage the care of dependent children in their own homes or in the homes of relatives violates the Social Security Act.

The full foster care subsidy of $105.00 is obviously far in excess of the approximately $60.00 per month AFDC received by a child living with a natural parent. Foster children also receive an additional clothing allowance and other benefits.

This necessarily has the effect of discouraging relatives from accepting related foster children, and to this

extent the Illinois scheme violates the Social Security Act. Foster parents who are related to their foster children are not spared any of the expense incurred by foster parents unrelated to their foster children. A foster child's needs are the same regardless whether he lives with a relative or a stranger. Moreover, the Appellees "may not assume that a [welfare] recipient's relatives, not legally responsible for his support, will charge less than other persons providing [similar care]." Marotti v. White, p.11 supra and other cases there cited.

Further the Social Security Act and numerous regulations promulgated purusant thereto require that federally shared funds be distributed on an objective and equitable basis. The Illinois system is discriminatory; even the Appellees admit this; and the District Court so found. See also Clampett v. Madigan, (CIV 73-4018 D. S. Dak. So. Div. 1973 supra).[3] And compare Townsend v. Swank, 404 US 282, 92 S. Ct. 502 (1971).

3] Acknowledgement is hereby made of the advice and assistance of Stephen L. Pevar, Esq., Mission, South Dakota (605/ 856-4444), counsel for Marie Clampett, et.al., on Part II of this Argument.

CONCLUSION

Appellants respectfully urge that the District Court erred and the decision below must be reversed because it violates the Equal Protection Clause and is inconsistent with the Social Security Act and the Supremacy Clause. The questions presented are of great public importance, and so substantial as to warrant consideration by the Court on full briefs and arguments.

Respectfully submitted,

Patrick A. Keenan

PATRICK A. KEENAN
Counsel for Appellants

DePaul Law Clinic
DePaul University College of Law
25 East Jackson Boulevard
Chicago, Illinois 60604
(312) 939-5370

Of Counsel:
Bogdan Martinovich

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

Plaintiffs,

v.

JEROME MILLER individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES, of the STATE OF ILLINOIS,

Defendants.

PATRICK A. KEENAN
ATTORNEY AT LAW
MAR 7 1974
RECEIVED

No. 73 C 635

MEMORANDUM OF DECISION

John Paul Stevens, Circuit Judge, and
Abraham L. Marovitz and Philip W. Tone, District Judges.

PHILIP W. TONE, District Judge.

This suit was commenced as a class action to enjoin the operation of the Illinois foster home program. Under that program foster parents who provide homes for children unrelated to them receive monthly foster care payments from the Department of Children and Family Services, but foster parents who provide homes for children related to them do not receive such payments. Because plaintiffs seek to enjoin the operation of a state statute, a three-judge court was convened pursuant to 28 U.S.C. §§ 2281, 2284. Defendants have now moved to strike and dismiss.

APPENDIX A (14 pages.)

The Illinois statutory scheme allocates federally subsidized payments to foster parents who care for children who are wards of the state. Section 5 of the Department of Children and Family Services Act, Ill. Rev. Stat., 1971, Ch. 23, § 5005, empowers the Department ("CFS") and its Director to

(a) establish rules and regulations concerning foster care;

(b) accept for care and placement in foster homes children adjudicated wards of the state; and

(c) make payments for the board, clothing, care, training and supervision of children placed in licensed foster homes.

Under the Department's eligibility criteria, eligibility for monthly payments, which now approximate $105 per child, depends upon the economic status of the home from which the child was removed, not on the wealth of the foster parents. By authorizing payments only to licensed homes, Section 5 denies eligibility to foster parents providing homes for children related to them, because those foster parents are exempt from licensing under the Child Care Act of 1969, Ill. Rev. Stat., 1971, Ch. 23, §§ 2212.05, 2212.17, and thus cannot be licensed.[1/]

1/ The parties have directed their arguments primarily to the Illinois Department of Children and Family Services Manual at 95-97 as the authority for denying payments to related foster parents. This manual, however, merely states that "[t]he Department has no statutory authority to pay relatives for the care of children," and thus does no more than summarize what is apparent on the face of the statutes. For the purposes of this opinion, then, Ill. Rev. Stat., 1971, Ch. 23, §§ 2212.05, 2212.17, and 5005 will be considered as the challenged statutes.

Foster parents caring for related children are eligible for Aid to Families with Dependent Children ("AFDC") payments under Ill. Rev. Stat., 1971, Ch. 23, §§ 4-1 to 4-11, but in order to receive these payments they must make a separate application to the Department of Public Aid, and more importantly, these monthly payments are only about $63.00 per child. In addition to the AFDC payments, some foster families in which the parents and children are related receive additional funds from the Social Service Administration up to the amount of the foster care payments, if the Department of Children and Family Services makes a determination of need. This exception to the general practice is explained only in the CFS placement manual, but according to an affidavit filed by an administrator of CFS, approximately 140 of the 1500 related foster families in the state now receive this extra allowance.

Plaintiffs are Marcel and Linda Youakim, husband and wife; Timothy and Mary Lou Robertson, the minor brother and sister of Linda Youakim who have been living with their foster parents the Youakims since 1972; and Larry and Sherry Robertson, the minor brother and sister of Linda Youakim who have been living in foster care facilities operated by persons unrelated to them since 1969. The Youakims allege that because they do not receive the full foster care payments, they suffer severe financial hardship in caring for Timothy and Mary Lou, and are financially unable to take in Larry and Sherry. On behalf of themselves and all other persons similarly situated, plaintiffs assert that the distinction between related and unrelated foster parents for the purpose of determining eligibility for foster

care benefits denies them equal protection of the laws as guaranteed by the Fourteenth Amendment, and they ask that defendants, the Illinois Department of Family Services and its director, be enjoined from enforcing, applying or executing this program.

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendants have moved to strike and dismiss the complaint, asserting, in addition to an abstention ground which we do not reach, that

(1) the Court does not have jurisdiction over the subject matter;

(2) the action should not be maintained as a class action; and

(3) plaintiffs have failed to state a claim upon which relief may be granted.

Both sides having filed affidavits asserting facts outside the pleadings, we treat the motion as one for summary judgment, as we are authorized to do by the last sentence of Rule 12(b).

At the oral argument plaintiffs urged that an evidentiary hearing should be held. In the view we take of the case, if the evidence most favorable to plaintiffs' contentions is assumed, judgment must be entered for defendants. An evidentiary hearing is, therefore, unnecessary.

Jurisdiction.

Defendants argue that this Court lacks jurisdiction because the action is in effect against the State of Illinois and therefore is barred by the sovereign immunity provision of the Eleventh Amendment. This argument is without merit.

Beginning with Ex Parte Young, 209 U.S. 123 (1908), it has been held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the state and thus is not prohibited by the Eleventh Amendment. This rationale has been consistently followed in numerous civil rights cases and other actions where the application or execution of state statutes has been enjoined, cf. Townsend v. Swank, 404 U.S. 282 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969), and has been applied to permit suits against state officials to test the constitutionality of statutes under which they are acting, Hill v. Wallace, 259 U.S. 44 (1922); Hammer v. Dagenhart, 247 U.S. 251 (1918). Indeed, under this rationale courts have assumed jurisdiction over many recent suits against state officials brought for the purpose of attacking social welfare schemes similar to the one here in question. Cf., e.g., Gaither v. Sterett, 346 F. Supp. 1095 (N.D. Ind. 1972); Jefferies v. Sugarman, 345 F. Supp. 172 (S.D.N.Y. 1972); Dimery v. Department of Social Services, 344 F. Supp. 1181 (S.D. Iowa 1972); Alexander v. Swank, 314 F. Supp. 1082 (N.D. Ill. 1970). The Court has jurisdiction to decide this case.

Class Action Issue.

Another preliminary question is the propriety of maintaining this action as a class action. If the requirements of Rule 23, F. R. Civ. P., are met, a court normally must approve a class action. Fujishima v. Board of Education, 460 F. 2d 1355, 1360 (7th Cir. 1972); but see Ihrke v. Northern States Power Co., 459 F. 2d 566, 572 (8th Cir. 1972). Defendants argue that

the claims of the named plaintiffs are not typical because not all foster parents will be financially unable to care for children related to them if they do not receive payments from the state. This argument ignores the basis of plaintiffs' claims. Plaintiffs are not challenging a system where payments are made to some and denied to others on the basis of need, but a scheme whereby, irrespective of the individualized needs of the foster parents, payments are made to families where the foster parents and children are unrelated, but, as a general rule, not to related foster families. The exception to the general policy allows payments to related foster families in certain cases, but even in light of this, related foster parents as a class are treated differently than unrelated foster parents, because in order to qualify under this exception they must meet a certain level of need which the unrelated foster parents do not have to meet. Thus, the interests of the named plaintiffs are typical of the class and, the other requirements of Rule 23 also having been met, the class action will be approved.

Other Preliminary Matters.

Before proceeding to the merits, we must first dispose of several other matters. One of these is plaintiffs' motion to strike certain allegations of an affidavit in support of defendants' motion by Frank J. Kopecky, Chief Counsel for CFS. Plaintiffs first seek to strike reference to the exception to the scheme under attack whereby under certain circumstances related foster parents are given payments in an amount equal to those given to unrelated foster parents. This motion will

be denied, for plaintiffs have not presented adequate grounds to strike these allegations, and plaintiffs themselves have filed affidavits which refer to the same exception. Next, plaintiffs seek to strike an allegation in the affidavit which refers to an administrative determination as the basis for the Department's policy of generally not paying related foster parents. This allegation will be stricken because of the affiant's failure to state specific facts from which we can determine his personal knowledge of this matter. Finally, plaintiffs seek to strike statements relating to the respective jurisdictions of the Department of Public Aid and the Department of Children and Family Services. Plaintiffs' motion in this respect will be denied, the affiant being capable of testifying as to these matters from his own personal knowledge.

The Merits.

We turn now to the equal protection question. A state statute dealing with social welfare need only be rationally based and free from invidious discrimination. Dandridge v. Williams, 397 U.S. 471 (1970). Since the statutes challenged here fall within the category governed by the Dandridge rule, their validity depends upon whether the distinction between related and unrelated foster parents is based on differences that are reasonably related to the legitimate purposes of the foster care program. Morey v. Doud, 354 U.S. 457 (1953).

Plaintiffs argue that, by providing for state aid only to foster parents who are unrelated to the child and denying it to others, the state has breached its duty to provide equally for all dependent children and has in fact contributed to the breakup of family homes. They assert that since related foster parents have the same need for state

subsidies to provide adequately for their foster children as do unrelated foster parents, there is no basis for the distinction. Although this statement of the state's duty may indeed be correct, plaintiffs have failed to recognize both the purpose for which the payments are made and the test to be employed in examining the classification of the statute. When a classification in a law such as this is called into question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. Morey v. Doud, supra, 354 U.S. 457; Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

At the time this statute was enacted, the Illinois General Assembly could reasonably have been concerned about how to use available public funds to provide as many foster homes as possible. It could reasonably have set out to provide for allocation of the available funds in a manner designed to secure the maximum number of foster parents for children who would otherwise remain parentless. A reasonable method of achieving this goal would have been to provide for the distribution of funds only to persons who would otherwise have had no particular reason or incentive for becoming foster parents rather than allocating the funds to all persons who become foster parents and thereby reducing the amount received by each; and it is on this basis that the defendants assert the classification was made. Allegedly, the state perceived a moral obligation on behalf of related foster parents to care for their related children which could not or would not be deepened by providing them a pro

rata portion of the available funds. Therefore, according to the defendants, the state decided that the money which could have been allotted to related foster parents would be better used as added inducement to unrelated persons.

This classification, the wisdom of which is not for us to determine, bears a rational relationship to the legitimate purpose of attempting to assure that foster homes are made available. Some related foster parents may not be able to afford the responsibility of caring for additional children,[2/] but the state argues that the scheme was not enacted to alleviate this problem, and from the fact that payments are not based on the relative wealth of the foster parents, this contention is borne out. In this respect, the case at bar differs from United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973), a case in which the Supreme Court held unconstitutional a statutory scheme which excluded from participation in the food stamp program any household containing an individual who is unrelated to any other member of the household. The critical point of that decision, and the basis upon which it is distinguishable from the case at bar, is that the purpose of the food stamp program was to alleviate hunger and that to fulfill this purpose it had to be administered on the basis of need rather than on the basis of the relationships of the people constituting one economic unit and sharing cooking facilities.

2/ Of course, this possibility is lessened by the fact that AFDC payments are generally available.

More analogous to the case at bar is Ramos v. Montgomery, 313 F. Supp. 1179 (S.D. Cal. 1970), aff'd, 400 U.S. 1003 (1971), a case involving a challenge to a California scheme under which AFDC payments made to natural parents were substantially less than payments made to foster parents. The Court in that case recognized that maintenance of the family structure was an important consideration in any child welfare program and that some natural parents were financially unable to provide suitable homes for their children, but nevertheless upheld the classification on the ground that the overriding purpose of the statute was the overall interest of the public in the protection of children[3/] and that this purpose was reasonably served by a plan which was motivated to provide as many foster homes as possible.[4/]

3/ Among the stated purposes for which child welfare services are authorized under the Illinois Department of Children and Family Services Act are "protecting and caring for homeless dependent or neglected children"; "protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members"; and "providing adequate care of children away from their homes, where needed, in foster family homes." Ill. Rev. Stat., 1971, Ch. 23, § 5005. On the basis of this language, it can be inferred that, as in Ramos, although strengthening of the family unit is an important concern of the Act, the primary purpose of the Act is the protection and care of children generally.

4/ Another basis for the decision in Ramos was that it was reasonable to expect that foster parents would incur expenses in meeting state licensing requirements which natural parents would not. Whether this rationale is also applicable to the case at bar is difficult to determine, for although relatives are not subject to licensing, they are kept under close scrutiny by CFS. In any event, it is not necessary for us to resolve this question.

The Ramos case is factually distinguishable from the case at bar, but the reasoning of the court is applicable here. A natural parent's responsibility to its child may stem from a legal duty, whereas a related foster parent's duty is moral, but in either case the result will generally be the same: the parent or relative is likely to care for the child. It is thus reasonable in either case for the state to adopt a program designed to induce families who would not otherwise become foster parents to assume that role.

The challenged classification will cause some children to be separated from their relatives for financial reasons. The state may reasonably have concluded, however, that the greater good of the greater number of children in need of foster homes is served by the classification which has been made. It may have concluded that if the classification were not made, the state's foster homes program would be jeopardized. As the class eligible to receive payments is made more inclusive, the individual payments become smaller. The possibility exists that if related persons are added to the eligible class, the individual payments would be reduced to an amount insufficient to induce qualified unrelated persons to provide foster homes for dependent children. Thus, the purpose of the payments

would not be served, and either the fiscal integrity of the program would be impaired or the standards for approval of unrelated persons might have to be compromised.5/

There is language in Townsend v. Swank, supra, 404 U.S. at 291, that serious equal protections problems may arise when a state attempts to rely on the concept of fiscal integrity to limit beyond federal statutory standards the class eligible to receive federally subsidized payments, but plaintiffs' argument that that dictum invalidates the Illinois program in question here is of no avail. The regulations interpreting

---

5/ A consideration of the consequences of eliminating the classification which plaintiffs challenge will identify another rational basis for it. The payments which are the subject of this litigation are intended to subsidize care for children who have been adjudicated wards of the state. It is manifest that there are many children in Illinois whose natural parents are deceased but who, without being adjudicated wards of the state, are cared for by relatives who are their legal custodians, guardians, or perhaps even adoptive parents. Certainly the state has an interest in encouraging its citizens to care for related minors who have been orphaned by the death of their parents, either by adopting them, accepting the responsibilities of guardianship, or even merely taking informal custody of such minor children without having them adjudicated wards of the state. If the plaintiffs' attack on the Illinois program were sustained, relatives would have a financial inducement to cause orphaned children to be adjudicated wards of the state in order to qualify themselves for foster care payments. The state may rationally conclude that such a financial motivation would contravene the policy of the laws relating to adoption and guardianship.

the Federal Social Security Act give the states "substantial latitude and corresponding responsibility for determining the coverage, nature, and scope of their public assistance programs," and limits this authority only to the extent that "the groups selected for inclusion in the plan ... must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act." 45 C.F.R. § 233.10. Far from being inconsistent with the federal scheme, the Illinois scheme in general seems to parallel it.[6/] The federal statute authorizes aid to the natural parents and relatives of dependent children in one section, 42 U.S.C. § 606, and aid to foster parents in another, 42 U.S.C. § 608. Additionally, more money is allocated under the federal plan to foster care payments than to regular ADFC payments. 42 U.S.C. § 603(a)(1)(B); see Ramos v. Montgomery, supra, 313 F. Supp. at 1182. Thus the federal statute makes the same classification as the Illinois statute.

6/ Plaintiffs argue that the "exception to policy" under which some related foster parents receive additional allotments on the basis of need makes the state scheme unlike the federal. This is a variation, which the federal regulations explicitly allow, 45 C.F.R. § 233.10, but the two schemes are nevertheless parallel.

The Illinois scheme does not deny plaintiffs equal protection of the laws. Summary judgment is entered in favor of defendants.

John Paul Stevens
Circuit Judge

Abraham Lincoln Marovitz
District Judge

Hubert L. Will
District Judge

Dated: February 28, 1974

APPENDIX B

Chapter 23 Illinois Revised Statutes

2212.03 Facility for child care, defined.] § 2.-03. "Facility for child care" or "child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children.

2212.17 Foster family home and types of homes, defined.] § 2.17. "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis. The family's own children, under 18 years of age, shall be included in determining the maximum number of children served. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all of their board by rendering some services to the family not prohibited by the Child Labor Law 1 or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

1 Chapter 48, § 31.1 et seq.

APPENDIX C

Chapter 23 Illinois Revised Statutes

§ 5001. Purpose

The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act. 1963, June 4, Laws 1963, p. 1061, § 1.

5005. Direct child welfare services.] § 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

For purposes of this Section:

The term "children" means persons found within the State who are under the age of 18 years at the time of acceptance for service or care. The term also includes children under age 18 and children age 18 or more but under age 21 who (1) are in foster care under order of a court and (2) were, at any time before August 1, 1969, recipients of foster care under Sections 6-4 or 12-8.6 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.1

The term "child welfare services" means public social services which supplement or substitute for parental care and supervision for the purpose of: (1) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse or exploitation of children; (2) protecting and caring for homeless, dependent or neglected children; (3) protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members; (4) providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities; or (5) providing counseling for mentally retarded, physically, and socially handicapped children and their parents when not otherwise available.

The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services.

For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop a comprehensive day-care plan for the State which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources. A written plan shall be submitted to the Governor, annually, on January 1, and shall include an evaluation of developments over the preceding year, including cost-benefit analyses of various arrangements.

(2) The Department shall conduct day care planning activities within the following priorities:

(a) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(b) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(c) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(d) care of children from families in stress and crises whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(e) expansion of family day care facilities wherever possible;

(f) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(g) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction.

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

(4) Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department shall establish rules and regulations concerning its operation of programs established to meet these purposes, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, and interstate services.

The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

The Department shall accept for care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the "Juvenile Court Act".2 The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the "Juvenile Court Act", but no such child

BEST COPY AVAILABLE

shall be committed to the Department by any court without the approval of the Department.

The Department may assume temporary custody of any child (1) if it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent or (2) if the child is found in the State and neither a parent, guardian nor custodian of the child can be located. The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to Section 1-13 of the "Juvenile Court Act".[3] A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the "Juvenile Court Act". If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate. The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average percapita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section.

The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.

Amended by P.A. 76-2041, § 1, eff. July 1, 1970; P.A. 77-1374, § 1, eff. Aug. 31, 1971.

[1] Chapter 23, §§ 6-4, 12-13.6.
[2] Chapter 37, § 701-1 et seq.
[3] Chapter 37, § 701-12.

APPENDIX D

Chapter 23, Illinois Revised Statutes

§ 2—11. "Legally Responsible Relative"

"Legally Responsible Relative": the spouse of an applicant or recipient; the parent or parents of a child who is under age 21; and the parent or parents of a child who is age 21 or over and blind or permanently and totally disabled and (1) has been continuously dependent, in whole or in part, upon one or both of his parents, and (2) has continuously resided in the home of a parent except for temporary absences for medical care or rehabilitative training.

The support obligation of other persons defined as "legally responsible relatives" in this Section prior to the effective date of this Amendatory Act of 1967, for aid extended to their dependents prior to such effective date, shall remain unimpaired. 1967, April 11, Laws 1967, p. 122, § 2-11; 1967, Aug. 1, Laws 1967, p. —, S.B. No. 1151, § 1.

Chapter Three
SPECIAL CHILD CARE PROGRAMS

Part Five: PLACEMENT WITH RELATIVES

I. DEFINITION

"Relative" means a person having any of the following relationships to the child by blood, marriage, or adoption: grandparents, brother, sister, stepbrother, stepsister, uncle or aunt. By administrative interpretation the definition has been broadened to include great-uncle, great-aunt and great-grandparent. Such "related" persons are not subject to foster home licensing whereas all other "relative" homes are subject to study and licensing as a foster family home.

II. LEGAL BASE

The Act Creating the Department of Children and Family Services authorizes provision of child welfare services which supplement or substitute parental care.

Provision of such services does not preclude placement of a child under care with approved relatives.

III. SCOPE OF SERVICE

The primary consideration in placement of a child with relatives are the needs of the child. Such placement, if indicated, is designed to reinforce the child's identification with "family."

IV. CRITERIA

If a relative home is to be considered as a placement resource the home must reasonably meet the minimum standards cited in Chapter Two, Section IV. Relative resources should be explored for all children for whom placement is indicated with the exception of children relinquished for adoption.

V. INTAKE

A. Request For Service

(1) The district office should check with the Illinois Department of Public Aid as a potential financial resource for the child(ren) living with relatives at the time of referral or for whom relatives are interested in accepting for care.

Part Five
SPECIAL CHILD CARE PROGRAMS

(2) Form CFS-602, Medical Report on An Adult or Child in a Licensed Child Care Facility, must be completed for all members of the household if a relative home is being considered as a placement resource.

B. Evaluation

Interest and concern of relatives in the child(ren); the feeling of relatives toward parents; ability to cooperate with the Department; and, placement of choice of the parents and child(ren) must all be explored as essential elements for a successful placement.

C. Disposition

In all relative placements the district office should approach the court seeking a court order appointing the Guardianship Administrator or the approved relative as guardian of the person of the child(ren) to insure the availability of a person to make decisions in behalf of the child(ren) and to prevent removal of the child(ren) by unauthorized persons.

VI. PROCEDURES FOLLOWING CASE ACCEPTANCE

A. The District Office will:

(1) Arrange for placement and authorize payment, if indicated and approved by Social Service Administrator, Metropolitan or Downstate Area.

(2) Supervise placement and provide casework services to the family or relatives on behalf of the child(ren).

B. The Relatives will:

(1) Accept terms of placement such as duration and agency goals for the child(ren) and work cooperatively with the agency to achieve these goals.

(2) Respect the parents desires for religious training for the child(ren).

BEST COPY AVAILABLE

1. PLACEMENT WITH RELATIVES

A. The Department has no statutory authority to pay relatives for the care of children. Only the Social Service Administrator of Metropolitan or Downstate Area may authorize such payment and it will not be authorized without written approval. A request for payment of a relative shall include: summary of the child's situation; legal status; reason for considering the proposed placement as desirable for the child; other plans tried or considered; financial circumstances of the relatives; and, monthly rate for which approval is requested.

B. If payment is to be made it shall be an inclusive rate which does not exceed the regular rates paid to Division of Child Welfare foster family homes.

C. Monthly payment to relatives is authorized by directing completed Form CFS-903, Payment Authorization, to the State Administrative Office, Springfield, 62706. Indicate in Section 4, Type of Payment #34 Relative - "legally exempt from licensing." Monthly amount to be entered in Section 5 Payments - Board. (See Chapter Two, Appendix 1, II A - Monthly Payment Rate.)

D. Initial placement clothing may be authorized by use of Forms CFS-932, Purchase Authorization, and FA-13, Invoice-Voucher. The vendor(s) should direct the completed forms to the State Administrative Office, Springfield, 62706, for payment. (See Chapter Two, Appendix 1, II B - Initial Clothing Allowance.)

E. Form CFS-425, Foster Home Placement Agreement, is to be signed in duplicate by the relative payee and the district worker with changes to indicate the relationship of the caretaker(s) to the child. One copy is kept by the relative and the other filed in the child's record.

APPENDIX F

Title 42 United States Code

§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub.L. 87-543, Title I, § 104(a) (4), (c) (2), 76 Stat. 185, 186; Jan. 2, 1968, Pub.L. 90-248, Title II, § 241(b) (1), 81 Stat. 916.

APPENDIX G

Title 42 United States Code

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a) (1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f) (2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a) (3) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under sections 721–728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961, Pub.L. 87-31, § 2, 75 Stat. 75, and amended July 25, 1962, Pub.L. 87-543, Title I, §§ 101(b) (2) (D), 104(a) (3) (F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub.L. 90-248, Title II, §§ 201(e) (4), 205(c), 81 Stat. 880, 892.

BEST COPY AVAILABLE